

## DEPARTMENT OF STATE REVENUE

04-20150670.LOF

**Letter of Findings Number: 04-20150670**  
**Indiana Sales Tax**  
**For Tax Years 2012 - 2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Indiana dealer was liable for Indiana sales tax on various transactions as it did not provide adequate proof of exemption or delivery outside of Indiana.

### ISSUES

#### I. Sales Tax - Imposition - Exempt Sales.

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-2.5-5-16; IC § 6-2.5-5-25; IC § 6-2.5-5-21; IC § 6-2.5-5-8; IC § 6-2.5-8-8; IC § 6-2.5-9-3; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463,466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974); Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-15](#); [45 IAC 2.2-5-25](#); [45 IAC 2.2-5-55](#); [45 IAC 2.2-5-59](#); [45 IAC 2.2-8-12](#); Sales Tax Information Bulletin 52 (January 2012); Sales Tax Information Bulletin 4 (September 2011); Sales Tax Information Bulletin 10 (April 2012).

Taxpayer protests the assessment of sales tax on sales to governmental entities and other exempt organizations, wholesale sales, and sales to auctioneers.

#### II. Sales Tax - Out-of-State Sales.

**Authority:** IC § 6-2.5-5-24; [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#).

Taxpayer argues because it sold firearms to customers and delivered those firearms to out-of-state locations, it was not required to collect Indiana sales tax on those transactions.

### STATEMENT OF FACTS

Taxpayer is an Indiana firearms dealer that buys and sells new and used firearms and firearm accessories. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for tax years 2012 - 2014 ("tax period at issue"). The audit concluded that Taxpayer had unreported sales for the tax period under audit. Because Taxpayer could not explain these unreported sales, an adjustment was made to assess sales tax on the additional sales. Further, the audit concluded that "[T]axpayer was unable to provide exemption certificates regarding the exempt sales claimed on the [T]axpayer's sales tax return." Thus, Taxpayer was assessed sales tax on these purported exempt sales.

Taxpayer protested the Department's assessment and provided additional evidence to support its protest. An administrative hearing was held. This Letter of Findings results based on the additional evidence provided by Taxpayer and the information contained within the protest file. Further facts will be supplied as required.

#### I. Sales Tax - Imposition - Exempt Sales.

### DISCUSSION

Pursuant to an audit, the Department assessed additional sales tax on unreported sales and disallowed certain exempt sales claimed by Taxpayer in its sales tax returns. Taxpayer argues that it was not responsible for the additional sales tax because its sales, which included (1) sales to not-for-profit organizations and governmental entities, (2) wholesale sales, and (3) sales to auctioneers should be exempt from sales tax.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). The retail merchant "must keep books and records so that the department can determine the amount, if any, of the [retail merchant's] liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). Thus, a taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The retail merchant is responsible for collecting the tax "as agent for the state." *Id.*

The legislature has deemed it appropriate to allow a number of specific sales tax exemptions under IC § 6-2.5-5. If a purchaser claims its purchase is "exempt from the state gross retail [] tax[]" [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). "Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose." [45 IAC 2.2-8-12\(b\)](#). "An exemption certificate issued by a purchaser **shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.**" [45 IAC 2.2-8-12\(f\)](#) (**emphasis added**). "A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail . . . tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

A statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, "[t]he general rule is that tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Several exemptions are relevant here; IC § 6-2.5-5-8 (see also [45 IAC 2.2-5-15](#)), IC § 6-2.5-5-16 (see also [45 IAC 2.2-5-25](#)) and IC § 6-2.5-5-25 (see also [45 IAC 2.2-5-55](#) through [45 IAC 2.2-5-59](#)). IC § 6-2.5-5-16 exempts sales of tangible personal property from Indiana sales tax if the "person acquiring the property . . . is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state . . . and predominantly uses the property . . . to perform its governmental functions." However, such entities "must register with the Department and issue an exemption certificate to the seller" in order to purchase property exempt from tax. Sales Tax Information Bulletin 4 (September 2011), 20110928 Ind. Reg. 045110515NRA.

IC § 6-2.5-5-25 exempts sales of tangible personal property "if the person acquiring the property . . . is an organization described in section 21(b)(1) of this chapter; primarily uses the property . . . to carry on or to raise money to carry on its not-for-profit purpose; and is not an organization operated predominantly for social purposes." IC § 6-2.5-5-21(b)(1) lists certain organizations that are exempt from Indiana sales tax including "[a]ny institution, trust, group, united fund, affiliated agency of a united fund, nonprofit corporation, cemetery association or organization that is organized and operated exclusive religious, charitable, scientific, literary, educational, or civic purpose . . . ." Thus, purchases made by a nonprofit organization are exempt from sales tax if the organization's purpose is one of those listed above, is not operated for social purposes and uses the item

purchased for its exempt purpose. Sales Tax Information Bulletin 10 (April 2012), 20120530 Ind. Reg. 045120248NRA.

Under IC § 6-2.5-5-8, "[t]ransactions involving tangible personal property . . . are exempt from the state gross retail tax if the person acquiring the property acquires it for resale . . . in the ordinary course of the person's business without changing the form of the property." A purchaser in a wholesale sale may provide a "properly executed exemption certificate . . . in lieu of collecting sales tax, provided the purchase is exempt under Indiana law." Sales Tax Information Bulletin 52 (January 2012), 20120125 Ind. Reg. 045120041NRA. Thus, the seller in a wholesale transaction is exempt from collecting Indiana sales tax on the transaction if the purchaser can provide a properly executed exemption certificate.

During the audit, the Department noted that "[T]axpayer provided limited records to be reviewed." The audit made several adjustments on the ground that Taxpayer failed to maintain adequate records as required under IC § 6-8.1-5-4(a). A review of Taxpayer's 2012 federal income tax return and "total sales reported on the sales tax returns revealed that sales reported on the federal income tax return were substantially higher than sales reported on the sales tax returns." Because Taxpayer was unable to provide supporting documents explaining the differences, the audit concluded that Taxpayer underreported its sales and proceeded to assess sales tax on the unreported sales. Additionally, the audit found that Taxpayer did not file income tax returns for 2013 and 2014, thus, the Department compared bank deposits to the total sales reported on Taxpayer's 2013 and 2014 sales tax returns. The audit noted that "This comparison resulted in more deposits than sales reported." Because Taxpayer could not explain the variance, an adjustment was made to assess sales tax on unreported sales for 2013 and 2014. Further, "[T]axpayer was unable to provide exemption certificates regarding the exempt sales claimed on the [T]axpayer's sales tax returns." Thus, Taxpayer was assessed sales tax on these sales.

Taxpayer argues that the final audit assessment should be reduced on the ground that certain sales were made to government entities and not-for-profit organizations. Taxpayer was given ample time to provide exemption certificates to support their exemption claim, both during the audit and during the hearing process, but was only able to provide a single exemption certificate for one transaction. Taxpayer's protest in relation to this transaction is sustained.

For the remaining transactions, Taxpayer provided copies of Taxpayer's own handwritten sales tickets in which various government entities such as police departments and city governments were listed as the customer. For four transactions, Taxpayer provided customer orders on customer letterhead to support Taxpayer's handwritten sales tickets. However, Taxpayer's documentation, including customer orders on customer letterhead, is not a valid exemption certificate because it is not in the form or manner prescribed by the Department as required under IC § 2.5-8-8 and [45 IAC 2.2-8-12](#). The plain language of the relevant legal authorities does not permit a taxpayer to create substitutions of the exemption certificates. *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.2d 579, 583 (Ind. 2014) (explaining that when a court "examine[s] a statute that an agency is 'charged with enforcing . . . [the courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party") (internal citations omitted). Pursuant to the Department's interpretation of the above referenced statutes and regulation, Taxpayer must obtain valid exemption certificates if sales tax is not collected at the time of the sale. Taxpayer failed to do so. Taxpayer's protest in relation to these sales is denied.

Taxpayer further argues its sales to auctioneers and other firearms dealers should be exempt from sales tax as the property was acquired by the purchaser for resale. Again, Taxpayer was given ample time to provide exemption certificates to support their exemption claim both during the audit and during the hearing process. Taxpayer provided statements from auctioneer customers listing the property purchased by the auctioneer. Taxpayer also provided copies of Taxpayer's own handwritten sales tickets in which various firearms dealers were listed as the customer. Similarly, customer statements and handwritten sales tickets are not sufficient evidence to support that the sales in question were exempt. Taxpayer's protest in relation to these sales is denied.

In short, Taxpayer provided one valid exemption certificate to support its sale concerning one customer was exempt and thus, Taxpayer is not liable for the sales tax on that transaction. However, in the absence of other valid exemption certificates, Taxpayer is responsible for the additional sales tax as to the remaining transactions at issue. The Department will conduct a supplemental audit review recalculating Taxpayer's sales tax liability.

## FINDING

Taxpayer's protest is sustained in part and denied in part.

## II. Sales Tax - Out-of-State Sales.

### DISCUSSION

As mentioned earlier, Taxpayer bears the burden to demonstrate that the Department's proposed assessment is not correct.

The Department assessed additional sales tax on various sales which Taxpayer claims were delivered to out-of-state locations. Taxpayer thus maintains that it was not liable for the additional sales tax on those items delivered out of state because they were not subject to Indiana sales tax.

"Transactions are exempt from the state gross retail tax to the extent that the gross retail income from those transactions is derived from gross receipts that are . . . derived from business conducted in commerce between the state and . . . another state . . ." IC §6-2.5-5-24; see also [45 IAC 2.2-5-53](#). "Sales of tangible personal property which are delivered to the purchaser in Indiana are subject to gross retail tax . . ." [45 IAC 2.2-5-54](#). If tangible personal property is delivered to a purchaser "in a state other than Indiana [the sale is] not subject to gross retail tax . . ." *Id.*

Taxpayer protests sales tax assessed on two transactions on the basis that these sales were made and delivered to out-of-state purchasers. Taxpayer was given ample time to present evidence in support of its claims. However, Taxpayer only provided copies of Taxpayer's own handwritten sales tickets in which "out of state" was written in lieu of a tax amount. In the absence of other verifiable supporting documentation, Taxpayer's own handwritten sales tickets alone, although marked as "out of state" are not sufficient evidence to prove that a sale was delivered out of state. Taxpayer's protest in relation to these sales is denied.

### FINDING

Taxpayer's protest is denied.

### SUMMARY

Taxpayer's protest is sustained in part and denied in part.

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